

AMENDED IN ASSEMBLY JUNE 21, 2006

AMENDED IN SENATE MAY 26, 2006

AMENDED IN SENATE MAY 9, 2006

AMENDED IN SENATE APRIL 18, 2006

AMENDED IN SENATE MARCH 27, 2006

SENATE BILL

No. 1452

Introduced by Senator Speier

February 23, 2006

An act to amend ~~Section 1236~~ *Sections 1236 and 1237* of, to add Section 8546.2 to, to add Article 4 (commencing with Section 8548.7) to Chapter 6.5 of Division 1 of Title 2 of, and to add Part 3.5 (commencing with Section 13885) to Division 3 of Title 2 of, the Government Code, and to amend Sections 11752.5 and 11873 of the Insurance Code, relating to state audits.

LEGISLATIVE COUNSEL'S DIGEST

SB 1452, as amended, Speier. State audits.

(1) Existing law requires that the Controller, the Director of Finance, and the respective staffs of all state agencies that have their own internal auditors or that conduct internal audits or internal audit activities, and all city, county, city and county, and district employees that conduct internal audits or internal audit activities of those respective agencies, utilize the general and specified standards of internal auditing specified in a publication of the Institute of Internal Audits.

This bill ~~instead~~ *would, with respect to cities, counties, cities and counties, and district employees, delete the references to internal*

auditors, internal audits, and internal audit activities, and instead refer to auditors, audits, and audit activities. It would require these state and local entities to instead conduct their work under the general and specified standards prescribed by the Institute of Internal Auditors or the Government Auditing Standards issued by the Comptroller General of the United States, as appropriate, and except as specified.

(2) Existing law sets forth the duties and authority of the State Auditor generally in conducting audit activities on behalf of the state.

This bill would require the State Auditor to request that any state or local agency, or any publicly created entity, that is the subject of an audit conducted under these provisions to provide updates on its progress in implementing the recommendations made by the State Auditor, at intervals prescribed by the State Auditor. It would require state agencies to provide these updates to the State Auditor.

This bill would enact the Omnibus Audit Accountability Act of 2006, to require the State Auditor to, by January 15th of each year, report to specified entities with respect to each state agency audit recommendation it has made that is more than one year old and that has not been implemented by the affected agency. It would require any state agency that is notified by the State Auditor that it has not implemented a recommendation made pursuant to this chapter more than one year prior, to provide specified information in that regard.

(3) Existing law requires all state and local agencies with an aggregate spending of \$50,000,000 or more annually to consider establishing an ongoing internal audit function.

The bill *instead would require state and local agencies with that aggregate annual spending amount to consider establishing an ongoing audit function, and* would require any governing body that oversees a state agency that performs or reviews internal audits to establish an audit committee, subject to specified criteria. It would set forth the requirements for reporting audit findings and recommendations by chief internal auditors, and specifically provide that an individual reporting certain information under these provisions is protected under provisions of law protecting state employees from retaliation for reporting waste, fraud, or abuse.

(4) Existing law exempts the State Compensation Insurance Fund from certain provisions of law applying to state agencies, with specified exceptions.

This bill would specify that the fund is subject to the provisions of law governing audits by the State Auditor.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1236 of the Government Code is amended to read:

1236. (a) All city, county, city and county, and district employees that conduct ~~internal audits or that conduct internal audits or that conduct~~ audit activities of those respective agencies shall conduct their work under the general and specified standards prescribed by the Institute of Internal Auditors or the Government Auditing Standards issued by the Comptroller General of the United States, as appropriate. *The standards generally provide as follows:*

(1) *That auditors should be independent of the activities they audit.*

(2) *That audits should be performed with proficiency and due professional care.*

(3) *That the scope of the audit should encompass the examination and evaluation of the adequacy and effectiveness of the organization's system of internal control and the quality of performance in carrying out assigned responsibilities.*

(4) *That audit work should include planning the audit, examining and evaluating information, communicating results, and following up.*

(5) *That the chief auditor should properly manage the auditing department.*

(b) Nothing in this section is intended to limit the rights or obligations of ~~internal auditors to conduct internal~~ auditors to conduct audits and audit activities in accordance with other laws and regulations that may apply to a particular entity, as appropriate.

SEC. 1.5. Section 1237 of the Government Code is amended to read:

1237. All state and local agencies with an aggregate spending of fifty million dollars (\$50,000,000) or more annually shall consider establishing an ongoing ~~internal~~ audit function.

SEC. 2. Section 8546.2 is added to the Government Code, to read:

1 8546.2. (a) The State Auditor shall request that any state
2 agency, as defined in Section 11000, whether created by the
3 California Constitution or otherwise, any local governmental
4 agency, including any city, county, city and county, school, or
5 special district, or any publicly created entity, that is the subject
6 of an audit conducted pursuant to this chapter provide updates on
7 its progress in implementing the recommendations made by the
8 State Auditor, at intervals prescribed by the State Auditor.

9 (b) Any state agency described in subdivision (a) shall provide
10 the State Auditor, in the form prescribed by the State Auditor,
11 with updates on implementation of recommendations as
12 described in subdivision (a).

13 SEC. 3. Article 4 (commencing with Section 8548.7) is
14 added to Chapter 6.5 of Division 1 of Title 2 of the Government
15 Code, to read:

16
17 Article 4. Omnibus Audit Accountability Act of 2006
18

19 8548.7. This article shall be known and may be cited as the
20 Omnibus Audit Accountability Act of 2006.

21 8548.9. (a) The State Auditor shall, by January 15th of each
22 year, report to the Joint Legislative Budget Committee, the Joint
23 Legislative Audit Committee, and the Department of Finance
24 with respect to each state agency audit recommendation it has
25 made that is more than one year old and that has not been
26 implemented by the affected agency.

27 (b) The report shall clearly identify the state agency audited,
28 the audit that contained the recommendation, a brief description
29 of the recommendation, the date it was issued, and the most
30 recent explanation provided by the agency to the State Auditor
31 on the status of the recommendation.

32 (c) Any state agency that is notified by the State Auditor that it
33 has not implemented a recommendation made pursuant to this
34 chapter more than one year prior, shall do either of the following:

35 (1) Provide a written report to the State Auditor, the respective
36 policy committees and budget subcommittees of the Assembly
37 and Senate with oversight of the agency, and the Department of
38 Finance, explaining why the audit recommendation has not been
39 implemented.

1 (2) Notify all entities described in subdivision (a) that it will
2 begin implementing the audit recommendation within 90 days of
3 the notification by the State Auditor, and include the estimated
4 date of implementation.

5 SEC. 4. Part 3.5 (commencing with Section 13885) is added
6 to Division 3 of Title 2 of the Government Code, to read:

7
8 PART 3.5. INTERNAL AUDITS
9

10 13885. The Legislature finds and declares as follows:

11 (a) Recent corporate scandals and federal legislation, such as
12 the Sarbanes-Oxley Act of 2002 (P.L. 107-204), focus attention
13 on the importance of internal audit activity to public
14 accountability and governance.

15 (b) Ensuring the independence of internal auditors of state
16 agencies and that their findings are reported to the appropriate
17 levels of government is critical to safeguarding public funds and
18 the public trust.

19 13886. (a) Any governing body that oversees a state agency
20 that performs or reviews internal audits shall establish an audit
21 committee that generally meets the frameworks recommended by
22 the American Institute of Certified Public Accountants, as set
23 forth in the publication entitled "AICPA Audit Committee
24 Toolkit: Government Organizations."

25 (b) For purposes of this chapter, "governing body" means a
26 board, commission, board of trustees, council, or other similar
27 body that oversees a state agency.

28 13886.5. (a) The Controller, the Director of Finance, and the
29 respective staffs thereof, and all state agencies that have their
30 own internal auditors or that conduct internal audits or internal
31 audit activities, shall conduct internal audit activity under the
32 general and specified standards of internal auditing prescribed by
33 the Institute of Internal Auditors or the Government Auditing
34 Standards issued by the Comptroller General of the United
35 States, as appropriate.

36 (b) Nothing in this article is intended to limit the rights or
37 obligations of internal auditors to conduct internal audits and
38 audit activities in accordance with other laws and regulations that
39 may apply to a particular entity.

1 13887. (a) In order to achieve independence and objectivity
2 pursuant to Section 13886, for any state agency that does not
3 report to a governing body, the internal auditor operations shall
4 meet all of the following requirements:

5 (1) The chief internal auditor shall be accountable to the head
6 or deputy head of the state agency.

7 (2) The chief internal auditor shall report audit findings and
8 recommendations made under his or her jurisdiction to the head
9 or deputy head of the state agency and to the general counsel to
10 the state agency, if applicable.

11 (3) The operations shall be organizationally outside the staff or
12 line management function of the unit under audit.

13 (b) In order to achieve independence and objectivity as
14 required by the standards identified in Section 13886, for any
15 state agency that is overseen by a governing body, the internal
16 audit operations shall meet all of the following requirements:

17 (1) The chief internal auditor shall be accountable to the audit
18 committee of the governing body.

19 (2) The chief internal auditor shall report audit findings and
20 recommendations made under his or her jurisdiction to the audit
21 committee and the general counsel to the governing body.

22 (3) The operations shall be organizationally outside the staff or
23 line management function of the unit under audit.

24 13887.5. (a) When the chief internal auditor of a state agency
25 believes that senior management in the state agency has accepted
26 a level of residual risk that may be unacceptable to the
27 organization or that senior management has otherwise not taken
28 appropriate action in response to a finding or recommendation by
29 its internal auditors, the chief internal auditor shall discuss the
30 matter with senior management and the general counsel to the
31 state agency. If that decision regarding residual risk or the need
32 for appropriate action in response to an audit finding or
33 recommendation, or both, does not resolve the issue, the chief
34 internal auditor and general counsel shall jointly report the matter
35 to the next highest level of management as pertains to the state
36 agency, including, but not limited to, the chair of the governing
37 body overseeing the state agency, the agency secretary, the
38 Governor's office, or the appropriate constitutional officer.

39 (b) If the decision regarding residual risk or the need for
40 appropriate action in response to an audit finding or

1 recommendation that could have a significant impact on the
2 state's fiscal operations, the performance of a significant
3 government program, or the delivery of a significant government
4 service, or other similar significant or critical government
5 services, as determined by the chief internal auditor, is still not
6 resolved after making the disclosures required pursuant to
7 subdivision (a), the chief internal auditor shall report the matter
8 to the Joint Legislative Audit Committee and the State Auditor.
9 At the direction of the Joint Legislative Audit Committee, the
10 State Auditor shall investigate a disclosure made pursuant to
11 subdivision (b) and report the results of the investigation in
12 accordance with Chapter 6.5 (commencing with Section 8543) of
13 Division 1. The disclosure requirements of this subdivision shall
14 not apply to any chief internal auditor who reports and makes
15 disclosures to an audit committee, as described in subdivision (b)
16 of Section 13887.

17 (c) Any chief internal auditor who makes a disclosure pursuant
18 to this section shall receive all protection available under the
19 California Whistleblower Protection Act (Article 3 (commencing
20 with Section 8547) of Chapter 6.5 of Division 1).

21 13888. (a) If an internal auditor employed by a state agency
22 has a good faith belief that the agency management is interfering
23 with the internal auditor's or auditors' ability to comply with the
24 provisions of this part, that the internal auditor or auditors are
25 under pressure to modify or limit findings or recommendations,
26 or that senior management is not taking appropriate action in
27 response to an audit finding or recommendation, the internal
28 auditor may report the information supporting that good faith
29 belief to the State Auditor.

30 (b) The State Auditor may investigate any report made
31 pursuant to subdivision (a) and if the allegations are
32 substantiated, shall report his or her findings pursuant to Chapter
33 6.5 (commencing with Section 8545) of Division 1.

34 (c) Any internal auditor making a report pursuant to this
35 section shall receive all protection available under the California
36 Whistleblower Protection Act (Article 3 (commencing with
37 Section 8547) of Chapter 6.5 of Division 1).

38 SEC. 5. Section 11752.5 of the Insurance Code is amended
39 to read:

1 11752.5. (a) Subject to subdivision (b), a licensed rating
2 organization shall make available any policy information
3 contained in its records to the following:

4 (1) The Department of Industrial Relations.

5 (2) Any other governmental agency if the Insurance
6 Commissioner, after consultation with the licensed rating
7 organization, approves the release of the policy information
8 requested to the agency.

9 (b) The Department of Industrial Relations and any other
10 governmental agency shall specify to the licensed rating
11 organization, in writing, the information requested, that the
12 information requested is to be used to facilitate the agency's
13 performance of its constitutional or statutory duties, and that the
14 information received will not be released to others, except in the
15 discharge of a specific statutory or constitutional duty, or
16 published without the prior written consent of the licensed rating
17 organization. In addition, if the Insurance Commissioner's
18 approval is required for the release of the policy information
19 requested, a written copy of the approval shall be submitted to
20 the licensed rating organization.

21 (c) As used in this section, "policy information" means
22 information which is contained in a workers' compensation
23 policy, including, but not limited to, the identity and address of
24 the employer, the identity of the insurer, the policy number, and
25 the policy period.

26 (d) Information obtained by a governmental agency pursuant
27 to this section shall be confidential and not subject to public
28 disclosure under any other law of this state.

29 (e) No licensed rating organization or member thereof, or
30 member of a committee of a licensed rating organization when
31 acting in its capacity as a member of the committee, or officer or
32 employee of a licensed rating organization, when acting within
33 the scope of his or her employment, shall be liable to any person
34 for injury, personal or otherwise, or damages caused or alleged to
35 have been caused, either directly or indirectly, by the disclosure
36 of information to a governmental agency pursuant to this section,
37 or for the accuracy or completeness of the information so
38 disclosed.

39 (f) This section shall not be construed as implying the
40 existence of liability in circumstances not defined in this section,

1 nor as implying a legislative recognition that, except for
2 enactment of this section, a liability has existed or would exist in
3 the circumstances stated in this section.

4 (g) This section shall not be construed as limiting any
5 authority of a licensed rating organization to disclose information
6 contained in its records to others.

7 SEC. 6. Section 11873 of the Insurance Code is amended to
8 read:

9 11873. (a) Except as provided by subdivision (b), the fund
10 shall not be subject to the provisions of the Government Code
11 made applicable to state agencies generally or collectively, unless
12 the section specifically names the fund as an agency to which the
13 provision applies.

14 (b) The fund shall be subject to the provisions of Chapter 10.3
15 (commencing with Section 3512) of Division 4 of Title 1 of, and
16 Chapter 6.5 (commencing with Section 8543) of Division 1 of
17 Title 2 of, the Government Code, and Division 5 (commencing
18 with Section 18000) of Title 2 of the Government Code, with the
19 exception of all of the following provisions of that division:

20 (1) Article 1 (commencing with Section 19820) and Article 2
21 (commencing with Section 19823) of Chapter 2 of Part 2.6 of
22 Division 5.

23 (2) Sections 19849.2, 19849.3, 19849.4, and 19849.5.

24 (3) Chapter 4.5 (commencing with Section 19993.1) of Part
25 2.6 of Division 5.

26 (c) Notwithstanding any provision of the Government Code or
27 any other provision of law, the positions funded by the State
28 Compensation Insurance Fund are exempt from any hiring
29 freezes and staff cutbacks otherwise required by law. This
30 subdivision is declaratory of existing law.